

# **EXHIBIT 6**

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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GOOGLE LLC,  
Petitioner,

v.

NEONODE SMARTPHONE LLC,  
Patent Owner.

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IPR2021-01041  
Patent 8,095,879 B2

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Record of Oral Hearing  
Held: October 17, 2022

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BEFORE: KARA L. SZPONDOWSKI, CHRISTOPHER L. OGDEN, and  
SCOTT B. HOWARD, Administrative Patent Judges.

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APPEARANCES

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The above-entitled matter came on for hearing on Monday, October 17, 2022, commencing at 1:02 p.m. EST at the San Jose, California USPTO Regional Office.

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1 why gliding away is any movement or, at a minimum, why it  
2 encompasses a flick and an insert gesture.

3 The petition provided no claim construction on what  
4 gliding away is, let alone show it is any movement.

5 Slide 24. They presented no other evidence, no  
6 dictionary definitions, no industry usage, no common usage,  
7 nothing, not one word on why glide is any generic movement  
8 with a direction that is just added in our argument now.

9 Going to Slide 25. The reason they didn't try that  
10 is that they couldn't. Any cursory review of any dictionary  
11 definition, any other extrinsic evidence will clearly show  
12 that a glide is a distinct gesture from a flick.

13 Now, Slide 25, as I mentioned already, we have  
14 provided dictionary definitions, not just from today but  
15 from back in 1993, around the time of Robertson, all showing  
16 consistently that a flick is a light, sharp, jerky stroke or  
17 movement. A light, quick, low jerk or touch. A sudden  
18 sharp movement.

19 Now, that's nothing like a glide, which again  
20 consistently requires a smooth, continues, and effortless  
21 movement.

22 So based on the plain meaning of these terms, as our  
23 evidence shows and that there's no contradicting evidence, I  
24 want to emphasize that, a glide and a flick, and their  
25 flicks are distinct movements.

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1 required for the claim, and I'll get to those slides.

2 We are not proposing that the representation of a  
3 function can only be activated with one gesture. And that's  
4 Petitioner's unsupported construction, but that's not how we  
5 are construing the claim.

6 So even if Neonode's phone, that representation at  
7 the bottom would be activated by both a gliding away and a  
8 flick, we don't believe that would fall outside of the scope  
9 of the claim.

10 JUDGE HOWARD: So you're saying the claim needs --  
11 something that's covered by the claim would need to determine  
12 the speed in which to determine whether or not something is a  
13 flick or a glide in order to be covered by the claim? Am I  
14 understanding that correctly?

15 MR. HENDIFAR: So we are saying that the  
16 representation should at least be activated by a gliding  
17 away. Whether it can also be activated by a flick, it may or  
18 may not be. The claim doesn't require one way or another.

19 JUDGE HOWARD: It seems to me you want your cake and  
20 eat it, too. You want a glide when you want a glide, but for  
21 purposes of prior art you want smooth, and it seems to me you  
22 want to reserve the right to, well, if it's a fast, quick  
23 movement, we still won't allow that in terms for  
24 infringement.

25 Shouldn't you just have one claim that's there? I

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1 activating by a flick, and there is no gliding away in  
2 Robertson.

3 JUDGE HOWARD: Okay. But my point is that I'm not  
4 sure there's a difference between a flick or a glide if  
5 you're saying that in order to practice the claim you don't  
6 need to keep track of the speed.

7 If you need --

8 MR. HENDIFAR: I didn't say that.

9 JUDGE HOWARD: -- to keep track of the speed --  
10 well, let me ask you.

11 In order to practice the claim, does something have  
12 to keep track of the speed and determine whether it's a  
13 smooth motion or a quick motion?

14 MR. HENDIFAR: You have to keep track of the  
15 characteristics of the motion, whether it's speed or  
16 acceleration or distance. That was not an issue -- I mean,  
17 because all the different systems can keep track of different  
18 characteristics.

19 But, yes, you do have to keep track of the  
20 characteristics that would make it a gliding as opposed to a  
21 flick.

22 JUDGE HOWARD: Right. And if it's a flick, it's not  
23 going to make the function activate because there's only one  
24 way to make the function activate.

25 I mean, I'm just reading the words. The words are

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1 also incorrect to say that our expert even suggested such a  
2 thing.

3 What Dr. Rosenberg explained was whether a specific  
4 movement is a swipe/glide or a flick depends on the context.

5 So for example, if you have a screen that is  
6 20 inches wide, as opposed to a screen that is 3 inches  
7 wide, a specific movement that may be a flick in one may not  
8 be a flick in the other. So it's a context-dependent  
9 distinction depending on various factors such as the size of  
10 the screen.

11 That doesn't make our distinction arbitrary, as  
12 evidenced by the fact that everybody in the industry is able  
13 to distinguish between those two movements.

14 JUDGE OGDEN: Well, it does make it difficult for us  
15 to understand the difference between a flick and a glide. It seems like we  
16 may have to make that  
17 distinction.

18 So what sort of guidance do we have, especially in  
19 the patent itself?

20 MR. HENDIFAR: Yes. So you actually don't have to  
21 delineate the actual distinction between a flick and a glide.  
22 This is not the case where we have a specific movement with a  
23 given characteristic.

24 So this is not the case where we have a reference  
25 that says here's a movement with this speed, this

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1 do I slide left, what gesture do I implement to the user so  
2 that I get the action that I want.

3 Now, going to Slide 59. The applicant distinguished  
4 Hirshberg because it said Hirshberg teaches a touch and  
5 glide operation only for keys that comprise several  
6 characters, meaning only for keys that give the users  
7 several options on what to do, depending on the input  
8 gestures.

9 In distinction, the claimed invention uses a  
10 multistep touch and glide operation for representation that  
11 consists of only one option for activating a function.

12 Going to Slide 60. And I think Judge Ogden raised  
13 this point. Robertson in this respect is indistinguishable  
14 from Hirshberg.

15 Now, Petitioner tries to overcome that by playing  
16 with the mapping. They remapped the function to this, they  
17 mapped it to that. But the reality of the matter is,  
18 Robertson has an X button that gives the user multiple  
19 options on what to do, depending on the input gestures,  
20 exactly like Hirshberg, which gave the user multiple options  
21 on as what to do depending on the user gesture.

22 So we submit that Robertson is exactly like  
23 Hirshberg with respect to the point that was actually  
24 distinguished from in the prosecution.

25 JUDGE OGDEN: Counsel, I see a little bit of tension

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1 perhaps between what you're arguing that the prosecution  
2 history means and the plain language of the claim.

3       Because if we put aside the prosecution history for  
4 a moment and just looked at the plain language, it seems like  
5 it could be read to say that a representation could have  
6 multiple functions and that there's only one option for  
7 activating each of the functions that could be associated  
8 with that representation.

9       Is that a tension and does the prosecution history  
10 explain that so that a person of ordinary skill in the art  
11 would have understood that the prosecution history is sort  
12 of modifying what the literal language of the claim is  
13 trying to say?

14       MR. HENDIFAR: So, first, we can't disregard the  
15 prosecution history. Case after case holds that you must  
16 construe the claims in light of the intrinsic record, a part  
17 of which is the prosecution history, and whereas here, the  
18 limitation was specifically added for a specific purpose to  
19 disclaim, distinguish. However you guys -- Your Honors want  
20 to phrase that -- I apologize -- the fact is that limitation  
21 was added for that purpose so we can't disregard the  
22 prosecution history.

23       But we are not arguing that the representation must  
24 only have one function. That's not what we're arguing. So  
25 if Your Honors would go to Slide No. 65.

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1 Petitioner is correct insofar as, in the  
2 specification, a representation can at different times have  
3 multiple functions. Yes.

4 The point is, at any given time, the user is given  
5 only one option in terms of what gesture to put in and what  
6 action to take. So the user -- let me step back.

7 So one of the features that the Neonode phone was  
8 praised for was the simplicity. So you don't have to  
9 memorize 20 different gestures from Robertson and, when you  
10 try to activate something, think, okay, do I have to go up,  
11 or left, or button, or do I do a caret? You don't have to  
12 memorize any of that. It's a simple one-option activation.

13 You swipe, the device activates what it activates.  
14 It can be one function or a different function, but the user  
15 is given only one option in terms of what to activate and  
16 what option to take.

17 So we submit that it's not proper to review the  
18 claim language divorced from the prosecution history. To  
19 the extent Your Honors would like to review that as a  
20 disclaimer or a modification of the claim language, that's  
21 fine, but the prosecution history is clear in that respect.

22 JUDGE OGDEN: So your initial 45 minutes are up, but  
23 if you want to continue, you can continue as long as you'd  
24 like.

25 MR. HENDIFAR: Thank you. I'll go for another maybe